

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

WILLIE JOE RHODES, SR.

Debtor.

B/K Case No.: 02-00778-W
Chapter 11

ORDER

FILED
at ___ O'clock & ___ min ___ M

SEP 18 2002

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (7)

ENTERED

SEP 18 2002

S.R.P.

This Proceeding comes before the Court upon a Motion by W. Joe Rhodes (herein referred to as Debtor) to reconsider an Order of this Court filed August 12, 2002 which modified the Automatic Stay pursuant to 11 USC §362 to permit Charleston Capital Creditor Corporation (herein referred to as Creditor) to pursue its State Court remedies against the Debtor. An Objection to the Debtors Motion was timely filed by the Creditor.

A hearing was held before me in the Courtroom of the United States Bankruptcy Court, Charleston, SC, on September 5, 2002. Appearing at the time of the hearing were Kevin Campbell, Esq., attorney for Debtor and Cynthia J. Lowery, Esq., attorney for the Creditor.

After the taking of testimony which was proffered by the parties and hearing the legal arguments of counsel, I find that this Court entered the Order based upon the Creditors filing of a Certificate of non-compliance (hereinafter referred to as Certificate) indicating that the Debtor did not comply with the terms of a Consent Order entered into between the parties and approved by this Court on July 15, 2002 (hereinafter referred to as Consent Order). The basis of the Debtor's non-compliance was failing to make a timely payment to the Creditor.

I further find that under the terms under the Consent Order, the Debtor was required to make a payment of Three Thousand Thirty-Six (\$3,036.00) Dollars within twenty (20) days of July 1, 2002. According to the Certificate, the Debtor failed to make his payment by July 22, 2002.

In his Motion to reconsider, the Debtor argues that July 20, 2002, the date the payment was due, fell on a Saturday and that he had until July 22, 2002, a Monday, to make the payment. The Debtor further argues that he made this payment on July 22, 2002 at or before 5:30 p.m. at the Creditor's mail slot and asserts that this timely payment is sufficient grounds for the Court to reconsider its Order, reinstate the Stay and require the Creditor to accept the Debtor's payment.

I conclude that this Court should construe the Consent Order strictly as the parties carefully chose the language in structuring their agreement. According to the Consent Order, the Debtor had twenty (20) days from the date the payment was due to make the payment. The parties agree that the twentieth day fell on a Saturday.

It is my opinion that the timing of the payments deadline is controlled by Rule 9006(a) of the Federal Rules of Bankruptcy Procedure which provides as follows:

"In computing any period of time prescribed or allowed....by Order of Court....(T)he last day of the period computed shall be included, unless it is a Saturday, Sunday, or a legal Holiday...in which event the period runs until the end of the next day which is not one of the afore mentioned days."

Applying Rule 9006(a) to the facts of this case, I conclude that the Debtor could make a timely payment until the end of July 22, 2002 and that the Debtor has complied with this deadline.

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I conclude that the Debtor's Motion should be granted provided the Debtor makes his payment to the Creditor within five (5) days from September 11, 2002 (September 16, 2002).¹ If the Debtor fails to make his payment by September 16, 2002, then the Motion to Reconsider Order Granting Relief from Stay shall not be granted and the Order of August 12, 2002 shall remain in effect.²

An additional issue arose regarding a provision in the Consent Order which permitted the Debtor to "skip" the August and or September payments provided the Debtor gave written notice to the Creditor of his intention to "skip" those payments. The Court is of the opinion that it would be impractical for the Debtor to conclude that he had to provide the written notice to the Creditor of his intention to "skip" these payments after the Creditor had obtained relief from the Stay. Therefore, the Debtor may be entitled to "skip" the August and or September payment provided that, by September 16, 2002, the Debtor advises the Creditor in writing of his intention to "skip" either or both of those payments.³ Failing such notice, the Debtor must make the payments by that deadline, and, if the Debtor fails to do so, then the Creditor may seek the relief provided in the Consent Order.

IT IS THEREFORE ORDERED that the Debtor's Motion is granted upon Debtor making the July payment to the Creditor by September 16, 2002.⁴

IT IS FURTHER ORDERED that, should the Debtor fail to make the July payment to the Creditor, then the Order of August 12, 2002 remains in effect.

IT IS FURTHER ORDERED that the Debtor may "skip" his August and or September payment provided he give written notice to the Creditor by September 16, 2002. Failing such notice, the Debtor shall make the payment or payments as appropriate. Should the Debtor fail to give the notice or make the payments, as the case may be, then the Creditor may proceed with the remedies provided in the Consent Order of August 12, 2002.

IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
September 18, 2002.

¹ Due to September 16, 2002 being a religious holiday and a question regarding the sufficiency of Debtor's funds, counsel to these parties have agreed that the deadline shall be as follows: payment by certified funds and notice of Debtor's intent to "skip" to be delivered to Charleston Capital Creditor Corporation on or before 5:00 p.m. on September 18, 2002.

² See footnote 1.

³ See footnote 1.

⁴ See footnote 1.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
~~was mailed on the date noted below to~~ *BMC*

✓ SEP 18 2002 ✓ (LST)

DEBTOR, DEBTOR'S ATTORNEY, ~~TRUSTEE~~

SHEREE R. PHIPPS

Deputy Clerk

✓ *Howery*
✓ *Wheeler*